



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JANUARY 18, 2023

IN THE MATTER OF:

Appeal Board No. 626998 A

PRESENT: MICHAEL T. GREASON, MEMBER

The Appellate Division has reversed and remanded the Board's decisions in Appeal Board No. 612770 and 612771, filed February 10, 2021 (See Matter of Nottage, 204 AD3d 1213). Pursuant to the Appellate Division's order, the Appeal Board, on its motion pursuant to Labor Law § 534, has reopened and

reconsidered these decisions that sustained the initial determinations charging the claimant with an overpayment of \$7,920 in regular unemployment insurance benefits recoverable because she made factually false statements to obtain benefits recoverable pursuant to Labor Law § 597 (4); and charging the

claimant with an overpayment of \$10,200 in Federal Pandemic Unemployment Compensation (FPUC) repayable pursuant to § 2104 (f) (2) of the Coronavirus

Aid, Relief, and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by 200 effective days and charging a civil penalty of \$1,188 on the basis that the claimant made willful misrepresentations.

Our review of the record reveals that the case should be remanded to hold a hearing. The record was not sufficiently developed on the determinations of recoverable overpayment and willful misrepresentations. The parties should have another opportunity to submit additional testimony and other evidence on this issue.

At the further hearing, the claimant's page packet that she submitted to the Judge, which contains a Department of Labor flyer and her correspondence to

the Department of Labor, should be accepted into the record after the appropriate confrontation. The claimant's appeal letter that contains additional documentation from the Department of Labor should be accepted into the record after the appropriate confrontation. The parties should be further questioned concerning the dates that the claimant reached out to the Department of Labor regarding questions about her eligibility. The Commissioner should be further questioned regarding the nature and purpose of flyer, and whether it responded to the claimant's attempts to contact the Department, and if not, why not.

Now, based on all of the foregoing, it is

ORDERED, that the decisions of the Appeal Board and the Administrative Law Judge be, and the same hereby are, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render new decisions, on the issues, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER